



OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS
JOHN CORNYN

March 1, 1999

Mr. Ryan Tredway
Staff Attorney
Legal Compliance, MC110-1A
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR99-0605

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122571.

The Texas Department of Insurance (the "department") received a request for "all information" concerning the requestor as it pertains to a complaint, as well as "any other information that may be contained in [the requestor's] file that maybe of an adverse nature." In response to the request, you submit to this office for review a copy of the records which you assert are responsive. You state that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You represent that "[t]he Enforcement section of TDI's Legal & Compliance Division currently anticipates litigation which relates to the requested information." You further explain that the submitted information, which "details the reasons for TDI's anticipation of litigation," "is the case file assigned to a TDI staff attorney." You seek to

¹We assume that any other responsive information that is not at issue will be provided to the requestor.

withhold "the entire set of information, the staff attorney's case file," under section 552.103. In this instance, the department has supplied this office with information which shows that there is ongoing investigation, and that litigation is reasonably anticipated. We additionally find that the documents submitted by the department are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In this regard we note that to the extent the requestor has seen or had access to the records at issue, there would be no justification for now withholding such information from the requestor at this time pursuant to section 552.103.² We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As we resolve your request under section 552.103, we need not address your other claimed exceptions at this time.³ We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 122571

²In fact, it appears that some of the submitted records may have already been seen by the requestor.

³We note that some of the information in the submitted records may also be confidential by law. Therefore, once litigation has concluded should there be a subsequent request for this information, we advise the department to exercise caution and seek a ruling from this office concerning the records. See Gov't Code §§ 552.352.

cc: Ms. Lisa Morris
HMO Texas
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Houston, Texas 77042
(w/o enclosures)